

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent No. : 7,539,530
Issued : May 26, 2009
Appl. No. : 10/646,271
Applicant : Jay D. CAPLAN, et al.
Filed : August 22, 2003
TC/A.U. : 3768
Examiner : ROZANSKI, Michael T.
Docket No. : 3619-0305.US
Customer No. : 06449
Confirmation No. : 9460

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Director of the United States Patent
and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants request that the Office revise the Patent Term Adjustment (PTA) calculated in connection with the above-identified now issued U.S. Patent. The number of days calculated by the Office was 830 days. However, in view of the recent decision in *Wyeth v. Dudas*, the Applicants believe that they are entitled to additional PTA. Specifically, the PTA should be based on the number of days beyond 14 months before Applicant received a first Office Action plus the number of days that pendency exceeded three years, minus any overlap between the two periods.

Filing date = August 22, 2003

14 month date = October 22, 2004

Three year date = August 22, 2006

First Office Action = February 12, 2007

Request for Continued Examination = May 21, 2008

Issue date = May 26, 2009

PETITION TO CORRECT PATENT TERM ADJUSTMENT
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First period = 843 days

Second period = 638 days

Overlap = 174 days

Applicant delay = 13 days

Total PTA = 1,294 days

Thus, the total PTA for this patent should be 1,294 days, not 830 days as originally calculated.

Furthermore, Applicants note the requirement in MPEP § 2733 that an application for a PTA be filed no later than the payment of the issue fee. However, because the opinion in *Wyeth v. Dudas* was just recently issued, that provision of the MPEP is not applicable in this situation.

Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

Respectfully submitted,

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